

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
U.S. GOVERNMENT

In the Matter of

Amendment of Part 5 of the Commission's  
Rules to revise the Experimental Radio  
Service Regulations

ET Docket No. 96-256

## COMMENTS OF PRONET INC.

ProNet Inc. ("ProNet"), by its attorneys and in accordance with the Commission's Rules, hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.<sup>1</sup> ProNet supports the NPRM's policy goals and objectives as stated in paragraph six thereof. Moreover, in ProNet's view, the specific rule proposals set forth in the NPRM are likely to achieve these Commission objectives.

Notwithstanding its support for the NPRM's broad aspirations and individual regulatory revisions, ProNet is compelled to comment on two specific topics raised in the NPRM's text, namely: five year terms for experimental licenses (NPRM at ¶ 7); and insulating the experimental licensing process from abusive filers (*id.* at ¶ 17). ProNet believes that there is a compelling need for immediately instituting a five year term for experimental licenses, exactly as proposed by the NPRM. At the same time, however, inflexible size and scope limitations on "market study" experimental licenses may prove too broad and potent a remedy for the specific problem the Commission seeks to ameliorate with this proposal.

## I. STATEMENT OF INTEREST

Among the nation's largest paging carriers, ProNet holds a wide array of permanent licenses for one-way and two-way paging frequencies assigned to the Commission's Part 22 and Part 90 land mobile services. In addition, through its wholly-owned subsidiary Electronic Tracking Systems, Inc. ("ETSI"), ProNet operates nearly 30,000 electronic tracking system ("ETS") transmitters pursuant to a nationwide experimental license granted and renewed by the Commission.<sup>2</sup> This ETS network delivers service in more than one hundred cities to over 90 police departments (and sheriff offices) and the Federal Bureau of Investigation (FBI), enabling these agencies to recover stolen cash and property, rapidly apprehend individuals committing thefts, and thereby prevent additional criminal acts that such perpetrators are likely to perform.<sup>3</sup> The Commission has held that using ETS in law enforcement deters criminals while reducing government costs by expediting recovery of stolen goods and capture of suspects.<sup>4</sup>

Notwithstanding recent establishment of a new Low Power Radio Service ("LPRS") in WT Docket No. 95-56,<sup>5</sup> retrofitting the many existing ETSI systems, which now operate on its experimental frequency, to accommodate the new LPRS frequencies will entail enormous capital expenditure than cannot now be cost justified. Accordingly, ProNet will remain dependent on its experimental license for the foreseeable future-- i.e., until such time as a substantial increase in market demand or technological innovation compels retrofitting existing equipment, at which time LPRS

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<sup>2</sup> See Experimental Radio Station KK2XJV, File No. 0923-EX-R-94.

<sup>3</sup> Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216-217 MHz Band (Report and Order in WT Docket No. 95-56), FCC 96-315, released August 2, 1996, at ¶10.

<sup>4</sup> *Id.* at ¶ 17.

<sup>5</sup> See text at note 3, *supra*.

frequencies can be introduced into existing systems.

ProNet's existing nationwide experimental license was obtained soon after the company became involved with law enforcement tracking systems by acquiring ETS technology from Texas Instruments (in 1988). The experimental license was issued on the express condition that ProNet undertake "all efforts to change appropriate FCC rules" so that ETS could operate pursuant to a permanent frequency allocation. ProNet's quest to fulfill this condition, which has consumed more than eight years, appears to have been attained with the advent of the LPRS, which will share the 216-17 MHz band on a secondary, non-interfering basis.<sup>6</sup> As mentioned above, however, LPRS spectrum is an option only for new ETS systems. With respect to its embedded ETS infrastructure that serves over one hundred cities and ninety law enforcement agencies, ProNet will remain dependent on its existing experimental license.

For this reason, ProNet has a continuing and deep interest in the Commission's Experimental Radio Service ("ERS") and in the outcome of this proceeding.

## II. EXPERIMENTAL LICENSES SHOULD BE ISSUED FOR A FIVE YEAR TERM

ProNet strongly endorses establishing a new class of experimental licenses with five year terms. Extending the license term in this manner will cause an immediate and substantial contraction in administrative and processing costs associated with experimental licenses. Moreover, both the Commission and the licensee community will reap the benefit of these decreased costs, allowing

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<sup>6</sup> ETSI's existing ETS systems are located principally in the following states: Arizona, Texas, Nevada, California, Oregon and Texas. While viewing the LRPS's establishment as a positive development in its protracted efforts to obtain permanent ETS spectrum for new systems, ProNet recently learned that the Commission has been issuing telemetry licenses in the 216-17 MHz band, pursuant to Section 90.259 of the Rules. Some of these licenses authorize Effective Radiated Power ("ERP") as high as 400 watts, while the maximum allowable ERP in the LRPS is 100 milliwatts. 47 C.F.R. §95.1013(a) (1996).

government and the private sector to reallocate resources to more productive uses.<sup>7</sup>

Notably, the universal cost reduction and increase in efficiency attending the proposed extension in license terms involves no loss in regulatory control or authority by the Commission.

Even if the five year license term proposal is adopted, the Commission will retain the discretion to order immediate cessation of experimental operations or to revoke experimental licenses without notice or hearing.<sup>8</sup> Because no diminution in the Commission's regulatory power over experimental licensees will result from the license term proposal, five year licenses should be available to all applicants in the Experimental Radio Service.

### III. REGULATIONS DESIGNED TO CURB ABUSIVE FILERS SHOULD BE CAREFULLY APPLIED IN APPROPRIATE CASES

The NPRM expresses a legitimate concern for possible abuse of Section 5.202(j), which allows operation of experimental radio stations for the purpose of conducting limited market studies. To deter abusive filers, the NPRM (at ¶17) proposes:

- » requiring the applicant to limit the size and scope of each market study;
- » requiring the applicant to submit a detailed narrative describing the proposed study and its objectives; and
- » allowing the Commission to determine the appropriate limits for market studies on a case-by-case basis and to terminate any study that exceeds these limits.

ProNet views these proposals as reasonable and prudent under the circumstances; indeed, aside from requiring applicants to include narrative descriptions of their proposed studies and objectives in

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<sup>7</sup> ProNet's impression is that application (especially renewal) processing has proven a more formidable burden in the experimental service relative to other Commission services. Thus, ETSI's most recent renewal for Station KK2XJV was filed August 29, 1996, weeks before the scheduled October 1, 1996 expiration. Almost six months later, no action has been taken on this application.

<sup>8</sup> See 47 C.F.R. §5.68 (1984).

applications, the NPRM's proposals reaffirm the content of existing rule sections, i.e., § 202(j) and § 206(c). Nevertheless, ProNet is concerned that, in reaction to past abuses, the Commission may be unjustifiably strict in determining "appropriate limits for market studies" and terminating "any such study that exceeds these limits."

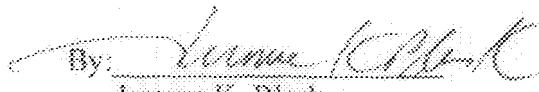
To insure against an excessive reaction to past abuses, ProNet urges the Commission to apply its termination power only to those "market study" authorizations where the likelihood of abuse is substantial. The hallmark of an abusive case, as indicated in the example discussed in the NPRM (at ¶ 17), is a license that can be acquired on a non-experimental basis only by a substantial capital expenditure, i.e., through an auction or purchase from an incumbent licensee. Where that attribute is lacking, Commission scrutiny regarding a market study's "appropriate limits" should be commensurately reduced. ProNet urges the Commission to incorporate this principal in the final Report and Order in this proceeding.

#### IV. CONCLUSION

For the reasons stated above, the Commission should adopt the proposals set forth in the NPRM as modified in accordance with the comments set forth herein.

Respectfully submitted,

PRONET INC.

  
By: Jerome K. Blask  
Jerome K. Blask

Gurman, Blask & Freedman, Chartered  
1400 Sixteenth Street, N.W. Suite 500  
Washington, D.C. 20036

Dated: February 10, 1997

*Its Attorney*